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June 16, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 03-118, Cambridge Electric Light Company and Commonwealth
Electric Company – 2003 Reconciliation Filing

D.T.E. 04-114, Cambridge Electric Light Company and Commonwealth
Electric Company – 2004 Reconciliation Filing

Dear Secretary Cottrell:

Enclosed for filing is on behalf of Cambridge Electric Light Company (“Cambridge”) and Commonwealth Electric Company (“Commonwealth”) (together, the “Companies” or “NSTAR Electric”) is the NSTAR Electric Opposition to the Late-Filed Petition to Intervene of the Energy Consortium. Also enclosed is a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert N. Werlin', written in a cursive style.

Robert N. Werlin

Enclosure

cc: Shaela McNulty Collins, Hearing Officer
Service List, D.T.E. 03-118/D.T.E. 04-114

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Cambridge Electric Light Company)
Commonwealth Electric Company)
_____)

D.T.E. 03-118/D.T.E. 04-114

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



Robert N. Werlin, Esq.
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Dated: June 16, 2005

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)	
Cambridge Electric Light Company)	
Commonwealth Electric Company)	D.T.E. 03-118/04-114
)	

**NSTAR ELECTRIC OPPOSITION TO THE LATE-FILED
PETITION TO INTERVENE OF THE ENERGY CONSORTIUM**

I. INTRODUCTION

On June 10, 2005, The Energy Consortium (“TEC” or the “Petitioner”) submitted a late-filed petition to intervene as a full-party in the above-referenced cases (the “Petition”). For the reasons set forth below, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric (“NSTAR Electric” or the “Companies”) oppose the late-filed Petition.

II. STANDARD OF REVIEW

In conducting an adjudicatory proceeding, the Department of Telecommunications and Energy (the “Department”) “may allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose,” as the Department may order. G.L. c. 30A, § 10(4).

Pursuant to 220 C.M.R. § 1.03(1)(b), a petition for leave to intervene in a Department proceeding must demonstrate how the petitioner is substantially and specifically affected by the proceeding. Boston Edison Company/Commonwealth

Electric Company, D.T.E. 98-118/98-119/126, at 8 (1999), citing 220 C.M.R. § 1.03(1)(b) and G.L. c. 30A, § 10. The Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Id. citing Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion). Tofias v. Energy Facilities Siting Board, 435 Mass. 340, 346 (2001) (This Court has repeatedly recognized that agencies have broad discretion to grant or deny intervention); City of Newton v. Department of Public Utilities, 339 Mass. 535, at 543, n.1 (1959) (Department's discretion to deny intervention allows Department to prevent interference with complicated regulatory processes).

When ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors:

The interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Boston Edison Company, D.P.U. 96-23, at 10 (citations omitted). In Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672 (1975), the court expressed its concern that "the multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact requirements as to standing, seriously erode the efficacy of the administrative process."

It is not enough that a petitioner is a customer of an electric or gas company; an individual customer must allege “peculiar damage” for full-party status.¹ Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14 (1999), citing Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217, n.7 (1983). The Attorney General has the statutory obligation to represent the customers of electric and gas companies. Eastern Edison Company, D.P.U. 96-24, at 6 (1997). Accordingly, a petitioner must demonstrate that its interests as a customer are not otherwise adequately represented by the Attorney General or another party in order to obtain full-party status. Boston Edison Company, D.P.U. 97-63, at 16 (1997); Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 15.

A late-filed petition to intervene must also be justified by a convincing showing of good cause:

The deadline for filing a motion to intervene or to participate in a Department proceeding is set out in the Order of Notice, which provides a brief description of the procedure and prescribes the time, manner, and frequency of publication of notice to the general public or to any specific class of persons designated by statute or by Department rule. Given legally sufficient notice (see Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (“An elemental . . . requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action...”), potentially interested persons may reasonably be presumed to be aware of and to respond to such notice. In the interest of fairness, the Department may allow late-filed petitions to intervene in a noticed proceeding, upon a showing of good cause.

In ruling on late-filed petitions to intervene or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, as noted, the Department considers

¹ TEC names only five members who are customers of Cambridge or Commonwealth (TEC Petition at 2). Because of TEC’s limited membership, the Department’s standards relating to individual customers are particularly applicable.

whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. s. 1.01(4). While “good cause” may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause in the first instance to the hearing officer acting under G.L. c. 25, s. 4...

Boston Edison Company, D.P.U./D.T.E. 97-95 (Interlocutory Order on Appeals of Hearing Officer Rulings), at 5-6 (1999).

III. ARGUMENT

The Petitioner is not substantially and specifically affected by this proceeding because it has alleged no peculiar damages that are unique and different from any other customers. It is not enough that a petitioner is a customer of an electric or gas company; an individual customer must allege “peculiar damage” to obtain intervenor status. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14 (1999), citing Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217, n.7 (1983). The Petitioners have stated no peculiar damage arising out of this proceeding.

Moreover, the Petitioner has stated no legitimate basis for why its interests are not otherwise adequately represented by the Attorney General, who has been an active and timely intervenor in this case since its inception. Boston Edison Company, D.P.U. 97-63, (Interlocutory Order on the Scope of the Proceeding and Petitions for Leave to Intervene) at 16 (September 2, 1997) (Cablevision has not shown its interests are not adequately represented by the Attorney General); Boston Edison Company, D.P.U. 97-63 (Interlocutory Order of Motion to Vacate and Reconsider by Cablevision Systems Corporation and on Motion for Reconsideration by New England Cable Television Association Inc.) at 11 (1997) (Department finds that Attorney General, with vast

experience in investigations before the Department, is amply qualified to represent Cablevision); Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126 (Interlocutory Order on Appeal of Hearing Officer Rulings Regarding Petitions to Intervene) at 12, 15 (March 19, 1999) (Department finds Attorney General adequately represents interests of Massachusetts Citizens for Safe Energy and Cape & Islands Self Reliance).

The Petitioner suggests that, because transmission adjustment charges are billed to its members on a demand basis rather than an energy basis, its interests may not be the same as residential and small commercial customers (TEC Petition at 4). The Petitioner has identified a distinction that makes no material difference in the context of its representation in the case by the Attorney General. Moreover, the suggestion is without merit because the Attorney General, by statute, has the obligation to represent *all* customers, not just residential customers. Eastern Edison Company, D.P.U. 96-24, at 6 (1997). See G.L. c. 12, § 11E, which states:

The [A]ttorney [G]eneral is hereby authorized to intervene in administrative or judicial proceedings held in the commonwealth *on behalf of any group of consumers* in connection with any matter . . . subject to the jurisdiction of the department of telecommunications and energy.

Id. (emphasis added). See also Taunton Municipal Lighting Plant, D.P.U. 91-273/92-273 (Order on Appeal by Massachusetts Public Interest Research Group of Hearing Officer Ruling Denying Late-Filed Petition to Intervene) at 10 (1994) (the Department rejects MASSPIRG's late-filed petition to Intervene based on claim that Attorney General has different interests).

The Petition should also be rejected by the Department because it is untimely and fails to demonstrate good cause. Boston Edison Company, D.P.U./D.T.E. 97-95 (Interlocutory Order on Appeals of Hearing Officer Rulings) at 5-6 (1999); Massachusetts-American Water Company, D.P.U. 95-118, at 2-4 (1996). The Department's Order of Notice required petitions to intervene be filed in D.T.E. 03-118 by May 12, 2004 — more than one year ago. The Department consolidated D.T.E. 03-118 with D.T.E. 04-114 on January 14, 2005, and required petitions to intervene in the combined proceeding by March 11, 2005.² The Petition was submitted to the Department on June 10, 2005. The Petitioner argues that good cause exists for its lateness because the Petitioner did not become aware of certain facts before reviewing the Companies' April 15, 2004 discovery responses to the Attorney General's information requests (TEC Petition at 5).³ However, such information identifies no peculiar harm or damages to the Petitioner as compared with all other customers. Of course, the nature of the discovery process itself is anticipated to yield new information on an ongoing basis throughout any adjudicatory proceeding. As a matter of administrative efficiency and fairness to the parties, the Department cannot allow new parties to intervene whenever new discovery responses are filed that offer some new piece of information.

[S]tandards for procedural timeliness are essential to efficient management of the Department's overall docket and to particular cases. Without such procedural rules, much of the Department's time and resources could be consumed with addressing petitions to intervene at any point during a case. Moreover, the parties to a proceeding are entitled to early certainty regarding the identity of all participants to that proceeding.

² Both of the Department's Orders of Notice required newspaper notice and service on counsel that appeared in earlier cases relating to the Companies' reconciliation proceedings. Counsel for TEC was served as required by the Orders of Notice.

³ The Petitioner offers no explanation for the nearly two-month delay between the filing of the April 15, 2005 discovery responses and filing its petition on June 10, 2005.

Boston Edison Company, D.P.U./D.T.E. 97-95 (Interlocutory Order on Appeals of Hearing Officer Rulings), at 7 (1999). In denying late-filed petitions to intervene, the Department has held that “persons interested in its proceedings bear the burden of keeping themselves apprised of its legal notices.” Bay State Gas Company, D.P.U. 95-52, at 2, *citing* Massachusetts Gas Utilities, D.P.U. 94-104-B at 7 n.4 (1995). “It is a potential petitioner’s personal obligation to be aware of notices of proceedings which may interest said potential petitioner.” If the Petitioner in this case already is actively reviewing all of the discovery in this case, it is unknown why it failed to petition the Department for timely intervention from the beginning of the proceeding. As the Department determined in a case involving a late-filed intervention petition by one of the named members of TEC:

The hearing officer was correct in finding that Harvard failed to show good cause for its late filing. The published legal notice in this proceeding was reasonably calculated and sufficient to call to the attention of any person, potentially interested in the matter, the nature of the proceeding and its threshold procedural requirements. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314. As required by the Department’s Order of Notice, COM/Elec delivered a copy of the notice to designated municipal officials in COM/Elec’s service territory. Also as required, COM/Elec published notice on August 13 and 14, 1998, in several newspapers available to Harvard, including the Boston Globe and the Cambridge Chronicle. The notice as published adequately described the purposes of the proceeding and specifically called to the attention of the reader the terms under which intervention might be sought, citing 220 C.M.R. s. 1.03 and G.L. c. 30A, s.10. More than this, a public notice in a proceeding of this kind cannot, and need not, do. Others similarly situated (such as MIT) heeded the notice and acted upon it. While there may occasionally be good cause for failure to respond to a public notice, good cause must be shown through adequate pleading of circumstances and reasons. Harvard has made no such showing. Indeed, its claim of “belated discovery” that features of the filing interested Harvard is tantamount to admitting that it knew of the proceeding but failed to follow up on its right to petition to intervene.

Cambridge Electric Light Company, et al., D.T.E. 98-78/83 (Interlocutory Order on Harvard College's Appeal of the Hearing Officer's Ruling) at 7 (1998).

Finally, and perhaps most importantly, the information that allegedly precipitated TEC's late interest in the proceedings relates to the response to an information request, which according to TEC, indicates that the Companies over-collected certain transmission costs (TEC Petition at 3). Not only is the allegation factually inaccurate, but the Department lacks jurisdiction and is not the proper forum to consider such a claim. TEC references transmission costs collected from 1998 through 2005, but the reconciliation of costs and revenues for all years through 2002 has been investigated, reconciled and closed by the Department, largely through Department-approved settlements with the Attorney General. Second, the allegations regarding "double collection" relate to transmission rates that had been filed with the Federal Energy Regulatory Commission ("FERC") and effective pursuant to the provisions of the Federal Power Act (the "FPA"). The Companies' retail transmission rates recovered transmission costs pursuant to rates that were effective under the FPA, and disputes relating to those FPA rates, cannot be resolved by the Department based on the Federal preemption of the regulation of transmission costs and the filed-rate doctrine. Moreover, TEC's allegations of "double collection" ignore possible offsetting undercollections relating to the FERC tariffs.⁴

⁴ It should be noted that that the FPA tariffs that are the subject of TEC's allegations have now been superseded by new tariffs recently (and voluntarily) submitted to FERC by the Companies and are presently effective under the FPA and the subject of an ongoing proceeding at FERC. See FERC Docket No. ER05-742-000. Issues relating to the new tariff and any disputes relating to the formerly effective tariff are under the exclusive jurisdiction of FERC.

Accordingly, TEC has neither demonstrated that it meets the Department's standard for intervention, nor established good cause for its late-filing nor shown that the only issue it identified is properly before the Department in this case. TEC's belated attempt to forum-shop through this late-filed petition should be rejected by the Department.

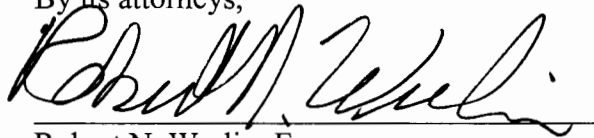
IV. CONCLUSION

For the foregoing reasons, NSTAR Electric requests that the Department deny the Late-Filed Petition to Intervene of The Energy Consortium.

Respectfully submitted,

**CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
d/b/a NSTAR Electric**

By its attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", is written over a horizontal line.

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Dated: June 16, 2005